

(2016) 02 BOM CK 0182

In the Bombay High Court

Case No : Writ Petition No. 1157 of 2016

Nanded District Central Co-Operative Bank

APPELLANT

Vs

Yadav

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Citation : (2016) 2 CLR 27 : (2016) 150 FLR 59 : (2016) MCR 1110 : (2016) 4 MhLJ 270

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : R.K. Ingole Patil, Advocate, for the Appellant; Ram S. Shinde, Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.V. Ghuge, J.—1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment and order dated 18.10.2013 delivered by the Labour Court, Nanded by which the Complaint ULP No. 16/2006 filed by the respondent was allowed and he was granted reinstatement with continuity of service and full back wages from 11.05.2006 till his retirement on 31.10.2010. The petitioner is further aggrieved by the judgment of the Industrial Court dated 09.07.2015 by which Revision ULP No. 183/2013 filed by the petitioner has been dismissed.

3. The strenuous contention of Mr. Ingole Patil, learned Counsel for the petitioner is that the respondent was charged with misappropriation. Grave and serious charges have been leveled upon him. Yet, the Labour Court has casually considered the enquiry conducted against the respondent as per rules and has interfered with the findings and enquiry by its Part-I judgment dated 05.12.2012 and has set aside the enquiry. By the impugned judgment dated 18.10.2013, the complaint has been allowed in its totality.

4. Mr. Patil further submits that the error committed by the Labour Court has been committed even by the Industrial Court while dealing with its revision petition. The Industrial Court has merely aggrieved with the conclusions of the Labour Court without proper application of mind. The seriousness and the gravity of the charges were not considered. An employee who has committed misappropriation has been virtually rewarded with reinstatement and full back wages.

5. Mr. Patil further submits that there was no evidence laid by the respondent-employee before the Labour Court after the Part-I judgment dated 05.12.2012 was delivered. In short, there was no evidence laid by the respondent on back wages. Yet, the Labour Court has casually and mechanically granted 100% back wages which is against the settled position of law. He therefore prays for quashing of the impugned judgments and for the dismissal of Complaint ULP No. 16/2006.

6. Mr. Shinde, learned Counsel for the respondent-employee has strenuously defended the impugned judgment. He submits that Part-I judgment dated 05.12.2012 has been accepted by the petitioner-bank and has not challenged the said judgment. As such, the conclusion of the Labour Court setting aside the enquiry for reasons set out in Part-I judgment have attained finally. The said enquiry now cannot be gone into as the same has been bottle down.

7. He further submits that despite the Labour Court having granted an opportunity to conduct a de novo enquiry before the Labour Court, the petitioner-bank chose not to conduct a de novo enquiry. This is evident from the conclusion of the Labour Court in paragraph no.4 of the impugned judgment that despite an opportunity, the petitioner has not conducted a de novo enquiry. Mr. Shinde therefore submits that once an employer declines to conduct a de novo enquiry, the case is of no evidence and as such, the charges leveled upon the employee are not proved.

8. Mr. Shinde further submits that the Industrial Court has rightly appreciated the fact situation and has appropriately dismissed the revision petition since there was no merit in the revision petition.

9. He however defends the conclusion of the Labour Court on back wages. He vehemently submits that once the order of termination/dismissal is set aside for being unsustainable in law and after the Labour Court makes a declaration of ULP against the employer, as a matter of course, the Labour Court has to grant full back wages to the employee. Unless the employer establishes that the employee is in gainful employment, the Labour Court cannot deprive the employee of back wages. He therefore prays for the dismissal of this petition with costs as the retiral benefits of the respondent have still not paid.

10. I have considered the submission of the learned Counsel as have been recorded hereinabove.

11. It is undisputed that the Part-I judgment of the Labour Court dated 05.12.2012 setting aside the enquiry has not been challenged by the petitioner. It is also undisputed that neither the petitioner conducted a de novo enquiry before the Labour Court nor did the respondent lead any evidence on the back wages. Once the employer has acquiesced its right to conduct a de novo enquiry, it virtually tantamounts to giving up the charges/dropping the charges against an employee. The Labour Court was therefore left with no option but to allow the complaint as the employer chose not to conduct a de novo enquiry. The Industrial Court apparently had to consider an "open and shut case". Needless to state, the Industrial Court has rightly concluded that the findings of the enquiry officer in allowing the complaint and reinstating the employee cannot be faulted as no charge was proved against the employee.

12. Notwithstanding the above, the petitioner has seriously raised an issue of back wages. It is trite law that an employee first has to discharge the burden by leading evidence that he is not gainfully employed, he has made a good attempt for seeking alternate employment and despite his best efforts, he was unable to obtain an alternate employment and was therefore left unemployed. It is undisputed that the respondent did not step into the witness box before the Labour Court. Consequentially, there has been no evidence before the Labour Court as to whether the respondent is gainfully employed or not.

13. The Apex Court in the case of Nicholas Piramal India Ltd. Vs. Hari Singh reported in , 2015(2)CLR 468 has considered a somewhat similar situation and has concluded that 50% back wages to reduce the hardships and the rigors of litigation suffered by a successful employee would be an appropriate relief. Considering the said ratio, I am inclined to modify the direction of the Labour Court granting 100% back wages into a grant of 50% back wages.

14. This petition is therefore partly allowed. The judgment and order of the Labour Court to the extent of continuity of service from the date of dismissal dated 11.05.2006 till the date of retirement of the respondent i.e. 31.10.2010 is sustained. The direction granting full back wages is modified and the petitioner is therefore directed to pay 50% back wages to the respondent for the period of 11.05.2006 to 31.10.2010. Needless to state, the petitioner shall clear all retiral benefits including gratuity and pension if any within a period of 12 weeks from today alongwith 50% back wages, failing which the said amount shall carry interest @ 6% p.a. from the date of the judgment of the Labour Court 18.10.2013.

15. Rule is made partly absolute in the above terms.